

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PERRY ALLISON HOOD,

Petitioner,

v.

FERNANDEIS FRAZIER, *et al.*,

Respondents.

Case No. 3:22-cv-00486-ART-CSD

**Order Provisionally Appointing
Counsel**

Perry Allison Hood submitted a *pro se* 28 U.S.C. § 2254 habeas corpus petition. (ECF No. 1-1.) This court reviewed the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and directed Hood to show cause as to why the court should not dismiss his petition challenging his 2013 judgment of conviction as untimely. (ECF No. 6.)

Hood acknowledges in his response to the show-cause order that his current federal petition is untimely. (ECF No. 7.) He also states that this court has already considered a previous petition challenging the same judgment of conviction. In case no. 2:22-cv-00117-CDS-VCF ("Hood I"), on June 2, 2022, United States District Judge Cristina D. Silva denied the petition with prejudice as untimely and denied a certificate of appealability. *See Hood I*, ECF No. 9. Thus, Hood must obtain authorization from the Ninth Circuit before this court may consider his second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(A) (providing "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.")

It does not appear that Hood has sought such authorization, which would make this petition an improperly filed second or successive petition. He now claims that, while he pleaded "no contest" to the charge of use of a minor in

1 producing pornography, he is actually innocent because he lacked intent. The
2 court concludes that counsel may be helpful in this case. The Criminal Justice
3 Act (“CJA”), 18 U.S.C. § 3006A(a)(2), authorizes the court to appoint counsel
4 “when the interests of justice so require.” The CJA further provides that a
5 habeas petitioner must demonstrate financial eligibility in all circumstances
6 where the court appoints counsel. See *id.* § 3006A(a) (counsel “shall be provided
7 for any financially eligible person”) (emphasis added).

8 Although this court finds that the appointment of counsel is in the
9 interests of justice, this court also recognizes that petitioner has not moved for
10 the appointment of counsel. Thus, this court intends to provisionally appoint
11 the Federal Public Defender (FPD) to represent petitioner in 45 days unless
12 petitioner declares his desire that this court not appoint counsel. Moreover, if
13 petitioner desires that counsel be appointed, he must file a complete *in forma*
14 *pauperis* (“IFP”) application to show that he cannot afford counsel to litigate this
15 case.

16 **IT IS THEREFORE ORDERED** that the Clerk of Court detach, file, and
17 **electronically SERVE** the petition (ECF No. 1-1) on the respondents.

18 **IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada
19 Attorney General, as counsel for respondents and provide respondents an
20 electronic copy of all items previously filed in this case by regenerating the Notice
21 of Electronic Filing to the office of the AG only.

22 **IT IS FURTHER ORDERED** that the Federal Public Defender for the
23 District of Nevada (FPD) is appointed to represent petitioner.

24 **IT IS FURTHER ORDERED** that the Clerk **electronically SERVE** the
25 FPD a copy of this order, together with a copy of the petition for writ of habeas
26 corpus (ECF No. 1). The FPD has 30 days from the date of entry of this order to
27 file a notice of appearance or to indicate to the court its inability to represent
28 petitioner in these proceedings.

1 **IT IS FURTHER ORDERED** that if petitioner desires the appointment of
2 counsel, he must file an application for leave to proceed IFP within 45 days,
3 accompanied by a signed financial certificate and a statement of his inmate
4 account. The Clerk is directed to send petitioner a blank application form for
5 incarcerated litigants.

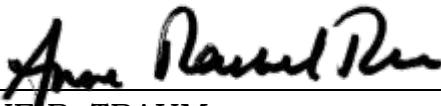
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7 DATED THIS 3rd day of February 2023.

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ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE

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